

FCC FACT SHEET***Minnesota Independent Equal Access Corporation
Petition for Forbearance from Dominant Carrier Regulation**

Declaratory Ruling and Memorandum Opinion and Order – WC Docket No. 22-407

Background:

As the communications marketplace evolves and both consumer and communications provider preferences change over time, the Commission must update regulatory obligations to keep pace. In this item, the Commission would reduce regulatory requirements by granting Minnesota Independent Equal Access Corporation’s (MIEAC) petition for relief from dominant carrier regulation with respect to its provision of centralized equal access (CEA) service, a type of interstate switched access service. While CEA service was once instrumental to achieve competition in long distance service in small rural areas, the marketplace for these services has changed significantly since the Commission authorized the provision of MIEAC’s CEA service in 1990. In light of declining demand, intervening exchange access service regulatory reforms, and technological changes in the voice services marketplace generally, dominant carrier regulation of MIEAC’s CEA service is no longer necessary to serve the public interest.

The Commission will consider a Declaratory Ruling and Memorandum Opinion and Order that will, if adopted, relieve MIEAC from compliance with dominant carrier regulations under sections 203 and 214 of the Act and the related Commission rules governing the provision of CEA service. Instead, MIEAC would be subject to the Commission’s non-dominant carrier regulations for its CEA service, which would safeguard just and reasonable rates and protect consumers.

What the Declaratory Ruling Would Do:

- The Commission would find that MIEAC no longer possesses market power—and is therefore no longer a dominant carrier—in the provision of CEA service.
- MIEAC would be relieved from dominant carrier regulation for its CEA service;
- MIEAC would be reclassified as a non-dominant carrier for its CEA service and regulated as such for tariffing and pricing requirements under section 203; and
- MIEAC would be subject to the more streamlined transfer of control and service discontinuance procedures for non-dominant carriers under section 214 for its CEA service.

What the accompanying Memorandum Opinion and Order Would Do:

- In the alternative, the Commission would grant MIEAC’s petition seeking forbearance from the dominant carrier requirements for its CEA service under sections 203 and 214 of the Act and the related rules.
- Forbearance would be conditioned on MIEAC’s compliance with the Commission’s non-dominant carrier rules regarding tariffed services, including benchmarking its tariffed CEA rates to the ILEC, as well as for transfers of control and service discontinuances. This condition would safeguard just and reasonable rates and protect consumers.
- Granting forbearance for MIEAC’s CEA service would also serve the public interest by reducing MIEAC’s compliance costs, increasing MIEAC’s efficiency, and thereby promoting competition.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or to its staff, including by email, must be filed in WC Docket No. 22-407, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Minnesota Independent Equal Access) WC Docket No. 22-407
Corporation's Petition for Forbearance)
From Dominant Carrier Regulation)

DECLARATORY RULING AND MEMORANDUM OPINION AND ORDER*

Adopted: [] Released: []

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its November open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. As the communications marketplace evolves and both consumer and communications provider preferences change over time, the Commission must update regulatory obligations to keep pace.¹ In this item, we reduce regulatory requirements by granting Minnesota Independent Equal Access Corporation (MIEAC) relief from dominant carrier regulation with respect to its provision of centralized equal access (CEA) service.² While CEA service was once instrumental “to achieve competition in long distance services in small rural communities,” the marketplace for these services has changed significantly in the decades since the Commission first authorized the provision of CEA service.³ In light of declining demand, intervening exchange access service regulatory reforms, and technological changes in the voice services marketplace generally, dominant carrier regulation of MIEAC’s CEA service is no longer necessary to serve the public interest.

2. We first adopt, on our own motion, a Declaratory Ruling, finding that MIEAC no longer exerts market power, and thus is no longer a dominant carrier, with respect to its provision of CEA service. Next, as an alternative basis for providing the relief requested by MIEAC, in the accompanying Memorandum Opinion and Order, pursuant to section 10 of the Communications Act of 1934, as amended (Act),⁴ we grant MIEAC’s petition for forbearance from dominant carrier regulation of its CEA service, subject to a condition that it comply with our rules applicable to non-dominant carriers going forward. In adopting this Declaratory Ruling and, in the alternative, conditionally granting MIEAC’s Petition, we continue our commitment to eliminating unnecessary and costly regulatory requirements while continuing to fulfill our statutory obligations to protect consumers and serve the public interest.⁵ Pursuant to section 10 of the Communications Act of 1934, as amended,⁶ our actions today relieve MIEAC of dominant carrier regulations that—as applied to MIEAC—no longer serve their original purpose and are unnecessary to serve the public interest, to ensure that MIEAC’s charges and practices for its CEA service are just and reasonable and not unjustly and unreasonably discriminatory, or to protect consumers.

¹ See *Technology Transitions et al.*, GN Docket No. 13-5 et al., Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8285, para. 2 (2016) (*2016 Technology Transitions DR and Order*).

² Petition of Minnesota Independent Equal Access Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) from Regulation as a Dominant Carrier, WC Docket No. 22-407 (filed Nov. 22, 2022) (Petition). On January 6, 2023, the Commission issued a Public Notice seeking comment on the Petition. *Pleading Cycle Established for Comments on MIEAC’s Petition for Forbearance from Dominant Carrier Regulations*, WC Docket No. 22-407, Public Notice, DA 22-1242 (WCB Dec. 1, 2022) (*MIEAC Public Notice*). MIEAC “requests relief only for itself, not for any other CEA provider, as other providers may or may not be situated similarly to MIEAC.” Petition at 9. Accordingly, the forbearance relief we grant in this proceeding is specifically limited to MIEAC and does not pertain to other CEA providers or their services.

³ See, e.g., *Application of Iowa Network Access Division et al.*, W-P-C-6025, Memorandum Opinion, Order, and Certificate, 3 FCC Rcd 1468, para. 3 (1988).

⁴ See 47 U.S.C. § 160.

⁵ See, e.g., *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8285, para. 3 (“We will consistently aim to modernize[] our rules by removing outmoded regulations, while preserving requirements that remain essential to our fundamental mission to ensure competition, consumer protection, universal service, and public safety.”) (internal quotation omitted).

⁶ See 47 U.S.C. § 160.

II. BACKGROUND

A. Relevant Regulatory History

1. Dominant Carrier Regulation

3. In the 1970s, competition emerged in the long-distance services marketplace, as competitive providers sought to enter and capture market share once held by the former monopoly long distance provider, AT&T.⁷ Reacting to this influx of competitive providers, the Commission established a two-tiered regulatory approach under which common carriers are classified as either dominant or non-dominant in their provision of regulated services.⁸ Under this framework, the most extensive regulations are imposed on dominant carriers, defined as carriers with market power—i.e., the power to control prices.⁹ These dominant carrier regulations counter the opportunity and incentive dominant carriers have to charge supra-competitive rates.¹⁰ By contrast, non-dominant carriers lack market power and are subject to more relaxed regulation that reduces barriers to entry and facilitates greater competition.¹¹ The first dominant carriers included legacy AT&T and the Bell Operating Companies (BOCs) that were spun off from AT&T and that owned and controlled the last-mile telephone network to end-user customers after the divestiture.¹² Other voice service providers that did not possess market power were considered non-dominant.¹³

4. Over the past 40-plus years, legislative mandates, as well as regulatory and technological changes, have led the voice service marketplace to evolve from a small number of dominant carriers relying on a single technology and operating in separate local and long-distance markets, to an all-distance, multi-technological, and increasingly competitive marketplace. In response, the Commission has reformed its dominant and non-dominant carrier regulatory regime multiple times to fulfill its responsibilities under the Act.¹⁴ The current dominant carrier regulations apply to MIEAC's CEA service

⁷ These competitive providers were known as interexchange carriers or IXCs. See, e.g., *Access Charge Reform et al.*, CC Docket No. 96-262 et al., Sixth Report and Order, 15 FCC Rcd 12962, 12965, para. 7 (2000) (*CALLS Order*) (subsequent history omitted).

⁸ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 F.C.C.2d 1, 10-11, paras. 25-27 (1980) (*1980 Section 214 Streamlining Order*).

⁹ 47 CFR § 61.3(q).

¹⁰ See *1980 Section 214 Streamlining Order*, 85 F.C.C.2d at 4, para. 15.

¹¹ *Id.* at 8, 20-21, paras. 33, 85-89.

¹² In the court-ordered break-up of the Bell System, the local exchange operations of the BOCs were divested from the rest of AT&T's operations, including AT&T's long-distance business. See *CALLS Order*, 15 FCC Rcd at 12956, para. 8. The BOCs "maintained monopoly franchises in their local market, but by splitting them off from AT&T's long-distance business, the federal courts removed an incentive for the BOCs to favor AT&T's long-distance business over its competitors." *Id.* Now AT&T competed directly with other IXC competitors to provide interstate, interexchange service, and all of the competitors, including AT&T, paid the BOCs for the service of providing the necessary access to end users, i.e., exchange access service. *Id.* Other independent (non-BOC) local exchange carriers (LECs) held similar monopoly franchises in their local service areas and also provided long-distance carriers with the ability to originate and complete their customers' calls to the end user. *Id.* at para. 7.

¹³ See *1980 Section 214 Streamlining Order*, 85 F.C.C.2d at 11, para. 27.

¹⁴ For example, under cost-based rate-of-return regulation, a dominant carrier's rates were generally set at levels to give the carrier an opportunity to recover its operating costs plus an authorized rate of return on the regulated rate base (plant in service minus accumulated depreciation). *Connect America Fund et. al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3172, para. 229 (2016). Through the end of 1990, access service revenues were governed by rate-of-return regulation. Later, under price cap regulation, which initially was adopted only for the largest LECs, price ceilings

(continued....)

under two provisions of the Act, sections 203 and 214(a), and are the subject of the Petition before us today.¹⁵

5. *Section 203 and Part 61 Dominant Carrier Regulations.* Section 203 of the Act requires common carriers to file tariffs with the Commission listing the charges for their interstate services and also the “practices[] and regulations affecting such charges.”¹⁶ The Commission implemented these requirements for dominant carriers in part 61, subpart E of its rules.¹⁷ Specifically, for dominant, cost-based rate regulated carriers, section 61.38 of the rules describes the supporting material to be filed with the tariffs of carriers with revenues that exceed \$500,000 in the most recent 12-month period, or are estimated to exceed \$500,000 for a representative 12-month period.¹⁸ The supporting material for such tariffs must include “an explanation of the changed or new matter, the reasons for the filing, the basis of ratemaking employed, and economic information to support the changed or new matter.”¹⁹ A smaller dominant, cost-based rate carrier that is “described as a subset 3 carrier in § 69.602” of the rules and that “serves 50,000 or fewer access lines in a study area” may elect to file tariffs pursuant to section 61.39.²⁰ The supporting material for these tariffs must include an explanation of the filing in the transmittal and a description of the basis for ratemaking that complies with the relevant Commission rules contained in section 61.39(b).²¹ And the requirements for the tariffs of dominant, price-cap regulated carriers are contained in sections 61.41 to 61.49 of the Commission’s rules.²² There are also customer notification and minimum-effective-period requirements that apply only to dominant carriers.²³

6. *Section 214(a) and Part 63 Dominant Carrier Regulations.*²⁴ Enacted to prevent anticompetitive practices, section 214(a) of the Act governs entrance into and exit from the telecommunications market.²⁵ When Congress adopted section 214(a), it required carriers to obtain Commission authorization to construct, acquire, operate, or engage in transmission over lines of

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were established at reasonable levels, encouraging the carrier to improve its “efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings” *CALLS Order*, 15 FCC Rcd at 1268-69, para. 16. Today, local exchange carriers that generally provide exchange access service are divided between “incumbents,” carriers that were providing local exchange service when Congress enacted the Telecommunications Act of 1996 and “competitive” carriers that subsequently entered local exchange markets. *See* 47 CFR § 51.5; 47 U.S.C. § 251(h).

¹⁵ 47 U.S.C. §§ 203, 214(a); 47 CFR pt. 61, subpt. E; 47 CFR §§ 43.43, 61.58, 63.03, 63.71.

¹⁶ 47 U.S.C. § 203(a).

¹⁷ 47 CFR pt. 61, subpt. E.

¹⁸ 47 CFR § 61.38(a).

¹⁹ 47 CFR § 61.38(b).

²⁰ 47 CFR § 61.39(a).

²¹ 47 CFR § 61.39(b).

²² 47 CFR §§ 61.41-49.

²³ *See, e.g.*, 47 CFR §§ 61.58(a)(4) (customer notification), 61.59 (minimum effective periods).

²⁴ *See* 47 U.S.C. § 214 (“Extension of lines or discontinuance of service; certificate of public convenience and necessity”); 47 CFR §§ 63.03, 63.71.

²⁵ *See* 47 U.S.C. § 214(a); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, and Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11366, para. 3 & n.9 (1999) (*1999 Section 214 Streamlining Order*) (noting that “Congress enacted the section 214(a) entry certification requirements to prevent useless duplication of facilities that could result in increased rates being imposed on captive telephone ratepayers” (citing 78 Cong. Rec. 10314 (1934) (Remarks of Rep. Rayburn))).

communication.²⁶ It also required carriers to seek Commission authorization before discontinuing, reducing, or impairing service to a community or part of a community.²⁷ Subsequently, the Commission conferred blanket section 214(a) operating authority on all carriers, dominant and non-dominant alike, thus relieving them of the need to seek Commission authorization on a case-by-case basis to construct lines and provide domestic telecommunications services.²⁸ Over the years, recognizing that ease of entry and exit is a necessary part of a truly competitive market,²⁹ the Commission has taken action to promote competition, consistent with the purpose of section 214(a), by streamlining, reducing, and eliminating unnecessary or more burdensome section 214(a)-related requirements.³⁰ But as the Commission further streamlined the application processes for obtaining authorization for transfers of control and

²⁶ 47 U.S.C. § 214(a) (“No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line.”). For convenience, in certain circumstances this item uses “entry” or “transfer of control” as shorthand that encompasses the statutory terms “construct, acquire, operate, or engage in transmission of lines of communication” unless the context indicates otherwise.

²⁷ *Id.* (“No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”). For convenience, in certain circumstances, this item uses “exit” or “discontinue” (or “discontinued” or “discontinuance,” etc.) as shorthand that encompasses the statutory terms “discontinue, reduce, or impair” unless the context indicates otherwise. The Commission has since extended its streamlined section 214(a) discontinuance requirements applicable to non-dominant carriers to providers of interconnected voice over Internet protocol (VoIP) service. *IP Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039, 6045-46, 6047, paras. 11, 14 (2009) (extending the domestic discontinuance requirements to interconnected VoIP providers in order to “safeguard[] the public interest in continuity of such services” without classifying interconnected VoIP services as either telecommunications services or information services).

²⁸ The Commission first granted blanket authority to non-dominant carriers and later extended it to dominant carriers. *1980 Section 214 Streamlining Order*, 85 F.C.C.2d at 7, 11, paras. 18, 27 (granting non-dominant carriers blanket authority for unlimited expansion of circuits into their authorized geographic service areas); *1999 Section 214 Streamlining Order*, 14 FCC Rcd at 11372, para. 12 (granting blanket authority to all carriers including dominant carriers and finding such action “will promote competition by deregulating domestic entry, allowing carriers to construct, operate, or engage in transmission over lines of communication without filing an application with the Commission”); see also 47 CFR § 63.01(a). Separately, the Telecommunications Act of 1996 eliminated carriers’ obligation to get Commission authorization in the specific case of line extensions. Telecommunications Act of 1996, Pub. L. 104-104, § 402(b)(2)(A) (1996) (“The Commission shall permit any common carrier—(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 for the extension of any line; . . .”).

²⁹ *1980 Section 214 Streamlining Order*, 85 F.C.C.2d at 7, para. 18.

³⁰ See *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8303-55, paras. 60-192; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, 33 FCC Rcd 5660, 5677, para. 37 (2018); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, 32 FCC Rcd 11128, 11162-63, 11165-66, 11169, paras. 88-89, 97-100, 109 (2017); see also *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, CC Docket No. 01-150, 17 FCC Rcd 5517 (2002) (*2002 Section 214 Transfer of Control Streamlining Order*); *1999 Section 214 Streamlining Order*, 14 FCC Rcd 11364; *1980 Section 214 Streamlining Order*, 85 F.C.C.2d 1.

discontinuances to allow for expedited filing and review, it maintained the distinction between dominant and non-dominant carriers.³¹

7. *Section 214(a) Transfers of Control.* In granting blanket entry authorization under section 214(a), the Commission nevertheless continued to apply section 214(a) application requirements to transfers of control of lines or authorizations to operate,³² regardless of the carrier's status as dominant or non-dominant.³³ Under section 63.03 of the transfer of control rules, dominant carriers are more limited in the extent to which they are eligible for presumptive streamlined treatment for transfers of control than non-dominant carriers.³⁴

8. *Section 214(a) Discontinuance Authority.* In addition to transfers of control, section 214(a) requires that a carrier obtain Commission authorization before it discontinues, reduces, or impairs service to a community or part of a community.³⁵ The Act and the Commission's rules set forth the conditions and procedures for obtaining authorization for service discontinuances,³⁶ and again different rules apply to dominant carriers than non-dominant carriers.³⁷ Today, while both dominant and non-dominant carriers are subject to streamlined processing, an application filed by a dominant carrier seeking to discontinue an interstate telecommunications service is subject to automatic grant on the 60th day after

³¹ See 2002 *Section 214 Transfer of Control Streamlining Order*, 17 FCC Rcd at 5518-19, paras. 1-2 (adopting section 63.03 to streamline certain section 214(a) transfers of control); 1999 *Section 214 Streamlining Order*, 14 FCC Rcd at 11378-81, paras. 26-32 (revising section 63.71 to provide for automatic-approvals of section 214(a) discontinuances with different time periods for automatic grants for dominant and non-dominant carriers).

³² 47 U.S.C. § 214(a).

³³ 47 CFR § 63.03; see also 1999 *Section 214 Streamlining Order*, 14 FCC Rcd at 11374-75, para. 18. In making the determination whether a transfer of control will serve the present and future public convenience and necessity, the Commission considers whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits. These analyses do not differ based on the carrier's classification as dominant or non-dominant. See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorizations*, GN Docket No. 21-112; IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 16999, para. 21 (2021) (*Verizon-TracFone Order*). The Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. See *id.*; 47 CFR §§ 63.03-.04.

³⁴ See 47 CFR § 63.03(b)(2) (setting forth the limited conditions under which a dominant carrier's application is eligible for presumptive streamlined treatment).

³⁵ 47 U.S.C. § 214(a).

³⁶ See 47 CFR §§ 63.60 *et seq.*

³⁷ See 47 CFR § 63.71(f)(1) (stating that domestic discontinuance applications will be automatically granted on the 31st day after filing for non-dominant carriers and on the 60th day after filing for dominant carriers). The Commission will grant discontinuance authority only if it determines that "neither the present nor future public convenience and necessity will be adversely affected." 47 U.S.C. § 214(a). Congress adopted this provision in section 214(a) to prevent "a loss or impairment of a service offering to a community or part of a community without adequate public interest safeguards." *Western Union Tel. Co. Petition for Order to Require the Bell Sys. to Continue to Provide Group/ Supergroup Facilities*, Memorandum Opinion and Order, 74 F.C.C.2d 293, 295 (1979); see also 1980 *Section 214 Streamlining Order*, 85 F.C.C.2d at 39, 43, paras. 114, 128 (explaining the purpose of the discontinuance provision was, in part, "to minimize service disruptions which Congress envisioned would result from the complete monopolization of the telegraph market due to the merger of Western Union and Postal Telegraph"). The Commission's evaluation of whether a planned discontinuance of service will adversely affect the public convenience or necessity is the same regardless of the carrier's status as dominant or non-dominant.

filing the application, whereas for applications filed by non-dominant carriers such grant occurs on the 31st day after filing the application.³⁸

2. CEA Providers and the Regulation of Interstate Switched Access Service

9. Interstate switched access service, which includes centralized equal access service, enables interexchange carriers to obtain access to local telephone exchanges to originate and complete interstate long distance telephone calls.³⁹ For example, when an interexchange carrier's (IXC) subscriber in New York calls someone in Chicago, the IXC connects the call between local networks in both cities. Historically, the calling party would pay the IXC, which in turn would pay the appropriate local exchange carriers a fee to access the local networks at either end of the call.⁴⁰

10. CEA providers like MIEAC were formed following the break-up of AT&T in 1984, as the nation transitioned from a "monopoly market structure to a competitive one."⁴¹ Before then, telephone subscribers generally obtained both local and long-distance services from the same company, AT&T.⁴² The divestiture of AT&T resulted in separate local networks, mostly controlled by BOCs and a long-distance network operated by AT&T. As a result, AT&T began competing directly with other companies to provide long-distance service, giving consumers more service options. Because the long-distance companies were largely separate from the local exchange carriers, the IXCs had to pay the LECs for the last-mile access to end users.⁴³

11. As a consequence of the divestiture, the court imposed "equal access" obligations that required the BOCs to begin providing equivalent connections to IXCs other than AT&T, by enabling customers to use competing long-distance networks using the same "1+ dialing" that customers had

³⁸ 47 CFR § 63.71(f); *see also* 1999 Section 214 Streamlining Order, 14 FCC Rcd at 11380, para. 29 (explaining "[t]he additional time is warranted following applications by dominant carriers, to ensure adequate opportunity for comments to be filed on whether substitute service is available[,] and "[t]his revision will promote competition and reduce regulation by applying to all carriers the automatic grant discontinuance procedures that currently apply only to non-dominant domestic carriers"). In both cases, however, the Commission may remove an application from streamlined treatment and automatic grant if it determines more time is necessary to make its public interest finding.

³⁹ *See, e.g., AT&T Corp. v. FCC*, 970 F.3d 344, 346 (D.C. Cir. 2020); *CALLS Order*, 15 FCC Rcd at 12966, para. 8.

⁴⁰ *See, e.g., AT&T Corp. v. FCC*, 970 F.3d at 346.

⁴¹ *See, e.g., Application of Indiana Switch Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations, to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Indiana*, File No. W-P-C-5671, Memorandum Opinion and Order, 1 FCC Rcd 634, 635, para 5 (1986) (*Indiana Switch 214 Order*) (Commission denied application for review of underlying Common Carrier Bureau order and affirmed that decision granting Indiana Switch authority to provide centralized equal access service); *see also supra* n.12. MIEAC is one of three CEA providers in the nation. Iowa Network Access Division d/b/a Aureon Network Services and South Dakota Network, LLC are the other CEA providers. MIEAC is a Minnesota corporation, formed on October 6, 1988, with its headquarters in Plymouth, Minnesota. Minnesota Independent Equal Access Corporation, Tariff F.C.C. No. 2, Transmittal Number 33, Tariff Review Plan (TRP) Submittal for July 1, 2022 Access Charge Tariff Filing, Interstate Access Tariff Filing Prospective Period, July 1, 2022 – June 30, 2023, Description and Justification, at 4 (filed June 24, 2022) (MIEAC Tariff Description and Justification) <https://apps.fcc.gov/etfs/public/otherFiling.action?idLec=42> "MIEAC no longer has three separate TDM tandem switches but is now absorbed into a nationwide distributed switch architecture that is utilized to provide capacity as well as physical and network redundancy." *Id.* at 5. MIEAC is a wholly-owned subsidiary of Onvoy, LLC d/b/a Inteliquent. Petition at 3.

⁴² *See, e.g., CALLS Order*, 15 FCC Rcd at 12965, para. 5.

⁴³ *See, e.g., CALLS Order*, 15 FCC Rcd at 12966, para. 8.

historically been able to use to access AT&T's long-distance network.⁴⁴ The Commission later determined that the independent telephone companies should be required to implement equal access under certain circumstances and under certain schedules that differed from those that governed the BOC telephone companies through the divestiture of AT&T.⁴⁵ The new equal access requirements, however, posed problems when applied to independent local exchange carriers in more rural areas. Many small, rural incumbent LECs operated switches that could not provide service to more than one long-distance carrier on a 1+ basis, and claimed that they lacked the financial ability to upgrade or replace their existing switches to provide equal access.⁴⁶ Further, they argued that the low volume of traffic from each individual incumbent LEC meant that IXCs would be unwilling to incur the high costs required to construct the facilities needed to interconnect long distance networks directly to the rural LECs' individual end office switches.⁴⁷

12. In some states, groups of small, rural incumbent LECs sought to address these issues by forming new, specialized entities to provide CEA service.⁴⁸ CEA providers, which were treated like local exchange carriers, allowed rural LECs to provide equal access without incurring the costs associated with upgrading their switches.⁴⁹ They enable rural customers to reach the networks of long-distance providers that have not built facilities to the end offices serving those customers, by connecting the IXCs' facilities to a centralized switch and network operated by the CEA provider.⁵⁰ The term "centralized equal access service" reflects the shift of equal access capability from the end-office to a central tandem switch that aggregates calls from many different end offices.⁵¹ The CEA provider, in turn, connects LEC networks to

⁴⁴ See generally *Common Carrier Bureau Releases Rep. on Equal Access Lines & Presubscribed Lines*, 1997 WL 677407 (Nov. 3, 1997), available at https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/eqacc-97.pdf; see also *Minnesota Independent Equal Access Corp.*, Docket No. P-3007/NA-89-76, Order Granting Certificate of Authority To Provide Equal Access Service, 1991 WL 501782, 119 P.U.R.4th 8, at 2 (Minn. PUC Jan. 10, 1991) (*Minn. PUC Order*), amended and clarified by *Minnesota Independent Equal Access Corp.*, Docket No. P-3007/NA-89-76, Order After Reconsideration, 123 P.U.R.4th 234, 1991 WL 501849 (Minn. PUC May 20, 1991). The Minnesota Commission explained that the Bell Operating Companies "were required to make available to competing IXCs access arrangements to the local network equal in kind and quality to those available to AT&T for interLATA toll. These new access arrangements taken together constitute a service system known as 'equal access.'" *Minn. PUC Order* at 2) (citing *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 196-98 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983)); see also 47 U.S.C. § 251(g). Local Access and Transport Areas refer to geographical boundaries that are generally used to determine whether a call is local or long distance in nature. See 47 CFR § 51.5.

⁴⁵ *MTS and WATS Market Structure Policies and Requirements, Phase III*, CC Docket No. 78-72, Report and Order, 100 F.C.C.2d 860 (1985) (extending equal access obligations to independent telephone companies).

⁴⁶ *AT&T Corp., Complainant, v. Iowa Network Services, Inc. d/b/a Aureon Network Services, Defendant*, Proceeding No. 17-56, EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9678, para. 5 (2017) (*Aureon Liability Order*), *aff'd, rev'd, & remanded in part sub. nom. AT&T Corp. v. FCC*, 970 F.3d 344 (D.C. Cir. 2020); *Minn. PUC Order* at 2.

⁴⁷ *Aureon Liability Order*, 32 FCC Rcd at 9678-79, para. 5.

⁴⁸ *Id.* at 9679, para. 5.

⁴⁹ See *Minn. PUC Order* at 3 (explaining MIEAC "provide[d] equal access service on behalf of and in conjunction with ILECs . . . by connecting unconverted end-office switches with MIEAC's access tandem equipped with equal access capability. . . . ILECs [were] able to provide equal access service without undergoing end-office conversion. ILECs whose end-offices contain[ed] the older electro-mechanical switches need[ed] not [to] replace them with upgraded computer controlled (i.e., digital) equipment. The ability to bypass end-office conversion and avoid upgrading to digital equipment [was] a short cut to the provision of equal access . . .").

⁵⁰ *Id.*

⁵¹ See *Minn. PUC Order* at 3.

the IXCs' networks at various points of interconnection.⁵² When the Commission first authorized CEA providers "to provide access service to interexchange carriers," it determined that those providers, including MIEAC, were subject to LEC dominant-carrier regulation.⁵³

3. Access Charge Reform

13. *2011 USF/ICC Transformation Order.* In 2011, the Commission adopted the *USF/ICC Transformation Order*, reforming the access charge rules and requiring LECs to reduce many of their switched access rates to bill-and-keep over several years.⁵⁴ The transition of those rates was completed in 2020.⁵⁵ For purposes of the *USF/ICC Transformation Order* and the attendant rules, MIEAC is a competitive LEC.⁵⁶ First, MIEAC is a LEC under section 51.5 because it "provi[des] . . . exchange access."⁵⁷ Secondly, MIEAC is not an incumbent LEC under section 51.5 because it neither provided "telephone exchange service" on February 8, 1996, nor was it a member of NECA on February 8, 1996, (or a successor to a member).⁵⁸ MIEAC is therefore a competitive LEC for purposes of the rules adopted by the *USF/ICC Transformation Order* because a "competitive local exchange carrier is any local exchange carrier, as defined in [Section] 51.5, that is not an incumbent local exchange carrier."⁵⁹

14. The Commission applied its access charge reforms, including the transition to reduced switched access rates, to all competitive LECs, including CEA providers, through section 51.911(c) which, in turn, applied the "procedures" of rule 61.26 (the CLEC Benchmark Rule) to all competitive LECs, including CEA providers.⁶⁰ Pursuant to the benchmark rule, as a general matter, a competitive

⁵² *Id.*

⁵³ *See, e.g., Indiana Switch 214 Order*, 1 FCC Rcd at 634, paras. 1-2 (explaining that the CEA provider in that case, Indiana Switch Access Division, "is a dominant carrier providing exchange access service."); *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, File No. W-P-C-6025, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468, 1469, para. 10 (1988) (granting authority to Iowa Network Access Division (INAD) to provide centralized equal access service and explaining "INAD is a dominant carrier providing exchange access services subject to Title II regulations"). *See also* 47 U.S.C § 153(32) (defining local exchange carrier as "any person that is engaged in the provision of telephone exchange service or exchange access").

⁵⁴ *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17677, 17934-36, 18149, paras. 36, 801 & fig. 9, 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR §§ 51.915, 51.917. Price cap incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those years to bill-and-keep (\$0) over a six-year period that ended in 2018. Rate-of-return incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those years to bill-and-keep (\$0) over a nine-year period that ended in 2020. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801, fig. 9; 47 CFR §§ 51.907(h), 51.909(j).

⁵⁵ *See* 47 CFR §§ 51.907, 51.909; *see also July 1, 2023 Annual Access Charge Tariff Filings*, WC Docket No. 23-9, Order, DA 23-282, para. 3 (WCB Apr. 3, 2023).

⁵⁶ *See* 47 CFR §§ 51.901-51.919.

⁵⁷ 47 CFR § 51.5; *see* 47 U.S.C § 153(20).

⁵⁸ 47 CFR § 51.5.

⁵⁹ 47 CFR 51.903(a).

⁶⁰ 47 CFR § 51.911(c); 47 CFR § 61.26 (the CLEC Benchmark Rule). The obligations created by the CLEC Benchmark Rule were adopted in their initial form in 2001, and prohibit a competitive LEC from tariffing interstate access rates above those charged by the competing incumbent LEC for similar services. *See Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Access Charge*

(continued....)

LEC may not tariff interstate switched access rates that are higher than the rate for similar services offered by the incumbent LEC serving the same area.⁶¹

15. In the *USF/ICC Transformation Order*, the Commission explained that modernizing the intercarrier compensation system was necessary to ensure affordable voice and broadband service “as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email.”⁶² The new switched access pricing rules created “a more incentive-based, market-driven approach [to] reduce arbitrage and competitive distortions by phasing down byzantine per-minute and geography-based charges . . . provid[ing] more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks.”⁶³ CEA providers, like all LECs, were subject to the access charge reforms adopted in the *USF/ICC Transformation Order*.⁶⁴

16. *2016 Interstate Switched Access Declaratory Ruling*. In 2016, the Commission determined that its intercarrier compensation reforms and transitional pricing rules had “progressed to a point where incumbent LECs no longer possess market power over interstate switched access,” and thus found they were no longer dominant in providing these services.⁶⁵ The Commission explained that “the market for switched access services has changed dramatically with . . . adoption of bill-and-keep as a new methodology,” and the transitional pricing rules “put default rates for interstate switched access service into effect” that “prevent incumbent LECs from charging IXCs excessive rates for switched access or inappropriately shifting costs among rate elements.”⁶⁶

17. While basing its finding that incumbent LECs do not possess market power “primarily on changes to the regulatory structure of interstate switched access,” the Commission also indicated that “broad market trends” demonstrating the “competitive decline” of this service “could provide a compelling basis for finding” that a carrier lacked market power and was no longer dominant.⁶⁷ The Commission pointed out its finding was “consistent with today’s marketplace realities”—as consumers and businesses “increasingly . . . abandon their landlines in favor of communications technologies that do not rely on local telephone switches” and “switched access voice lines.”⁶⁸

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Reform Order); 47 CFR § 61.26. Section 61.26 directly applies only to non-dominant carriers, but the CLEC benchmarking obligation extends to MIEAC, and other CEA providers, by application of 47 CFR § 51.911(c). See *AT&T Corp. v. FCC*, 970 F.3d at 349-50; *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60 et al., Order, 37 FCC Rcd 2519, 2520, para. 3 (2022) (*Aureon Data Order*). In this order, we refer to sections 51.911(c) and 61.26, as the “benchmarking requirement.”

⁶¹ 47 CFR § 51.911(c); 47 CFR § 61.26 (the CLEC Benchmark Rule).

⁶² *USF/ICC Transformation Order*, 26 FCC Rcd at 17669, para. 9.

⁶³ *Id.*

⁶⁴ 47 CFR §§ 51.907, 51.909, 51.911(c).

⁶⁵ *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8285, 8292, 8295, paras. 4, 27, 34.

⁶⁶ *Id.* at 8291-92, 8295, paras. 22, 27, 33 (The Commission explained that the “comprehensive overhaul of its intercarrier compensation and universal service regimes has fundamentally changed the regulatory character of interstate switched access. This regulatory restructuring of the marketplace has led to conditions under which no carrier can exert market power in its provision of these services, regardless of its dominance classification.”); see also *id.* at 8297-98, para. 43 (“The reforms of the *USF/ICC Transformation Order* lie at the heart of today’s ruling” that incumbent LECs are non-dominant in providing interstate switched access services.).

⁶⁷ *Id.* at 8293, para. 29.

⁶⁸ *Id.* at 8288-90, 8293, paras. 13, 17, 28 (“Interstate switched access was once an indispensable functionality that made long distance communications across multiple networks possible. When every telephone subscriber used a switched access line, every long distance caller relied on interstate switched access by technological necessity.

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18. The Commission did not, however, extend non-dominant status to CEA providers as part of the *2016 Declaratory Ruling*.⁶⁹ As the Commission later explained, “[a] non-dominance determination (i.e., a determination that a carrier lacks market power) involves an examination of many factors concerning the market for the services in question” and it had not made a non-dominance finding as to CEA providers because there was no record or other basis on which it could find that CEA providers lacked market power, given that CEA providers did not participate in the proceeding.⁷⁰ “[U]niquely situated under the existing rules,” CEA providers thus remained the only LECs subject to dominant carrier cost support rules in the provision of interstate switched access service, while at the same time subject to the benchmarking requirement applicable to competitive LECs.⁷¹

19. *2018 Aureon First Tariff Investigation Order*. As part of its investigation into tariffs filed by another CEA provider, Aureon, the Commission explained that CEA providers face multiple independent and overlapping regulatory requirements.⁷² In addition to being regulated as dominant carriers operating under cost-based rate regulation for their CEA services, CEA providers were also considered competitive LECs under the 2011 access charge reforms and subject to the benchmark requirement.⁷³ First, as dominant carriers, CEA providers are subject to the cost-based tariff filing requirements in section 61.38, which include developing specific cost information and projections to support their tariffed rates.⁷⁴ As part of this filing process they must submit explanations and data to

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Today, switched access telephone lines are far from ‘a monopoly platform for the delivery of voice services.’ Consumers and businesses rely less than ever on local telephone switches—and, accordingly, on interstate switched access—to communicate over long distances.”) (internal citation omitted).

⁶⁹ *Id.* at 8290, para. 19 n.43.

⁷⁰ *Aureon Liability Order*, 32 FCC Rcd at 9690-91, para. 27.

⁷¹ See 47 CFR § 51.911(c); *Iowa Network Access Division, Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Memorandum Opinion and Order, 33 FCC Rcd 7517, 7563, para. 114 n.344 (2018) (*Aureon First Tariff Investigation Order*) (concluding the first Aureon tariff investigation) (“With respect to the competitive LEC benchmark and the cost-based rate, we recognize that CEA providers . . . are uniquely situated under the existing rules due to their status as both competitive LECs and dominant carriers.”). This Commission decision and two other related orders were appealed to the D.C. Circuit Court in Consolidated Case Nos. 18-1258, 19-1014, and 19-1087; these appeals were subsequently voluntarily dismissed by the petitioners. See *Iowa Network Access Division, Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, 33 FCC Rcd 11860 (2018) (denying petition for consideration of *Aureon First Tariff Investigation Order*); *Iowa Network Access Division, Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Memorandum Opinion and Order, 34 FCC Rcd 1510 (2019) (concluding the second Aureon tariff investigation); *Iowa Network Services, Inc. d/b/a Aureon, Petitioner, v. FCC, Respondents, AT&T Services, Inc. et al., Intervenors*, D.C. Cir. No. 18-1258 Consolidated with Nos. 19-1014, 19-1087, Order, Document No. 1903718 (D.C. Cir. June 24, 2021) (granting petitioners’ joint unopposed motion for voluntary dismissal).

⁷² *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7563, para. 114.

⁷³ *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7563, paras. 114-15.

⁷⁴ See *id.* at 7519, para. 4. Dominant carriers are required to file and maintain tariffs either as rate-of-return or price cap carriers. See *Aureon Liability Order*, 32 FCC Rcd at 9679, para. 7. CEA providers, subject to the same cost-based rate information as rate-of-return dominant carriers, may elect to file tariffs under sections 61.38 or 61.39 of our rules, depending on their size and revenues, either individually or under a National Exchange Carrier Association tariff. See *Aureon Liability Order*, 32 FCC Rcd at 9679, para. 7; 47 CFR §§ 61.38, 61.39, 69.601 *et seq.* The Commission explained that, even though it found incumbent LECs to be non-dominant, it expected that these carriers generally would continue to file access tariffs on seven or 15 days’ notice to receive the benefit of deemed lawful rates. *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8299, para. 46. Incumbent LECs are also “required under the transitional rules to submit cost support as part of their annual tariff filings.” *2016 Technology Transitions DR and Order*, 31 FCC at 8299, para. 47 (citing 47 CFR § 51.919).

support proposed tariff changes, such as a cost of service study for the most recent 12 months, a study containing a projection of costs for a representative 12-month period, and estimates of the effect of the proposed changes on traffic and revenues for the affected service.⁷⁵

20. Second, in addition to being required to comply with section 61.38, CEA providers, as competitive LECs, are also subject to benchmarking requirement.⁷⁶ Given that CEA providers are subject to both cost-based rate regulations and the benchmarking requirements, the Commission has determined that their tariffed rates must be the lower of the benchmark rate or the cost-supported rate.⁷⁷ Further, under the Commission's rules, MIEAC's tariffed tandem service rate for originating 8YY traffic is capped at the nationwide rate of \$0.001.⁷⁸

B. MIEAC's Petition for Forbearance

21. On November 22, 2022, MIEAC filed a Petition, requesting that the Commission forbear from applying dominant carrier rules and requirements pursuant to sections 203 and 214(a) of the Act to its CEA service offerings.⁷⁹ No party filed any comments in response to the Petition.⁸⁰ As a result, the

⁷⁵ 47 CFR § 61.38 (“Supporting information to be submitted with letters of transmittal” in tariff filings).

⁷⁶ 47 CFR § 51.911(c) (referencing the procedures in 47 CFR § 61.26); *see supra* n.60; *see also Aureon Data Order*, 37 FCC Rcd at 2520, para. 3; *USF/ICC Transformation Order*, 26 FCC Rcd at 17937, para. 807 (finding that application of the intercarrier compensation reforms would generally apply to competitive LECs via the competitive LEC benchmark rule in an effort to eliminate disparate regulatory treatment between different classes of carriers); *see also Aureon Liability Order*, 32 FCC Rcd at 9689, para. 25.

⁷⁷ *See Aureon Data Order*, 37 FCC Rcd at 2520, para. 3; *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7563-64, para. 115 (“[S]ection 61.38 [dominant carrier cost support requirements] and the competitive LEC section 51.911 [benchmarking] requirements ‘complement each other’ and therefore Aureon must meet the requirements of each, independent of one another Because these rules provide for independent calculations, and therefore limitations on the rate for Aureon’s switched transport service, we find that Aureon may only tariff a rate at the lower of the benchmark rate or cost-based rate.”) (emphasis in original). The Commission has explained that the rate transition required by the *USF/ICC Transformation Order* and applied to competitive LECs via the competitive LEC benchmark does not permit a CEA provider to charge a cost-based tariff rate above the benchmark even if that cost-based rate was calculated in compliance with the applicable accounting and rate-of-return rules. *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7566, para. 121 (explaining that the rules adopted in the *USF/ICC Transformation Order* have been upheld by the U.S. Court of Appeals for the Tenth Circuit).

⁷⁸ Petition at 11; *see also 8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594 (2020) (*8YY Access Charge Reform Order*) (combining separate 8YY transport and tandem switching charges into a single nationwide tandem switched transport access service rate capped at \$0.001 per minute).

⁷⁹ *See generally* Petition & Appx. A (“Scope of Requested Relief”). Specifically, MIEAC seeks forbearance from the following requirements in the Act and our rules: 47 U.S.C. § 203 (as it relates to dominant carriers); 47 U.S.C. § 214 (as it relates to dominant carriers); 47 CFR pt. 61, subpart E (setting forth “General Rules for Dominant Carriers”); 47 CFR § 61.58 (to the extent it provides notice requirements for tariff publications by dominant carriers); 47 CFR § 63.03 (to the extent it limits dominant carrier eligibility for presumptive streamlined treatment for transfers of control); 47 CFR § 63.71 (to the extent it provides discontinuance rules specific to domestic dominant carriers); 47 CFR § 43.43 (requiring reports by dominant carriers of proposed changes in depreciation rates applicable to operated plant). We treat MIEAC’s Petition as both a request for declaratory ruling that it is no longer a dominant carrier with respect to its CEA service and a separate request for forbearance from dominant carrier regulation of its CEA service.

⁸⁰ *See generally MIEAC Public Notice*. In accepting the application for filing and placing it on public notice, we find that the Petition is complete as filed, in compliance with section 1.54 of our rules. 47 CFR § 1.54. The Commission defines “complete as filed” to mean that a forbearance petition must meet all of the requirements stated in section 1.54, including requirements to explicitly state the scope of the relief requested, address each element of the statute as it applies to the rules or provisions from which the petitioner seeks relief, identify any other proceedings pending before the Commission where the petition speaks to the relevant issues, and comply with

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record before us contains no objections to the Petition nor disagreements with the facts MIEAC presents therein.

22. The Commission granted authority to MIEAC in 1990 under section 214(a) of the Act, to lease and operate transmission facilities to provide CEA service—consisting of both originating and terminating switched access service—to IXCs through a centralized switching facility in Minnesota.⁸¹ As a CEA provider, MIEAC serves IXCs, enabling them to aggregate and deliver long-distance traffic to and from end users.⁸² Today, MIEAC’s statewide network includes an Internet Protocol (IP) tandem switching system and geographically dispersed tandem access points known as Toll Transfer Points, where IXCs may interconnect with MIEAC’s network.⁸³ MIEAC’s tandem switching and transport service enables IXCs to aggregate their long-distance traffic at a single point for completion to and from the local exchanges of more than 80 independent LECs, and provides 1+ presubscription (equal access) service allowing customers to connect to the IXC of their choice in those exchanges.⁸⁴ MIEAC’s tariff governing its CEA service includes the following interstate switched access rate elements: originating switched transport for 8YY calls; originating switched transport for 1+ interexchange calls; terminating transport; and terminating tandem switching.⁸⁵

23. In seeking relief from dominant carrier regulation, MIEAC argues that it “cannot effectively exercise market power over any class of traffic it carries” because both LECs and IXCs may exercise options for service that are effective alternatives to the switching and transport service that MIEAC provides.⁸⁶ According to MIEAC, each of the five Local Access and Transport Areas (LATAs) it serves “has at least one, and in several cases multiple, access tandems operated by LECs that offer

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format requirements. *See id.*; *see also* *Petition to Establish Procedural Requirements to Govern Proceedings For Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543, 9553-54, paras. 16-19 (2009). MIEAC’s Petition satisfies these criteria.

⁸¹ Petition at 3 (citing *Application of Minnesota Independent Equal Access Corp.*, File No. W-P-C-6400, Memorandum Opinion, Order and Certificate (Com. Car. Bur. Domestic Facilities Div. Aug. 22, 1990) (*MIEAC Section 214 Order*). The Minnesota Public Utilities Commission granted MIEAC and its affiliate, Minnesota Equal Access Facilities Company, Certificates of Public Convenience and Authority to provide CEA service within the state of Minnesota. *See generally* *Minn. PUC Order*.

⁸² *See* MIEAC Tariff Description and Justification at 5. MIEAC’s switches connect the networks of participating local carriers, known as subtending carriers, to the IXCs’ networks. For example, an AT&T subscriber in rural Minnesota might originate a call to someone in New York, and MIEAC would connect the call from its subtending carrier to the AT&T network. Conversely, if someone in New York called someone in rural Minnesota, their IXC would connect the call from its local New York network to MIEAC, which in turn would connect it to the appropriate subtending carrier. If a LEC operating in Minnesota does not subtend MIEAC’s network, the IXC sends calls to that LEC’s Minnesota customers through a network provider other than MIEAC.

⁸³ Petition at 3. MIEAC does not operate end-office switches or provide local exchange telephone service directly to consumers. *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 10 (citing *Minnesota Independent Equal Access Corp. Tariff F.C.C. No. 2*, Transmittal No. 33, 2nd Revised Page 6-37, Section 6.7.1(A) (July 1, 2022) (MIEAC Transmittal No. 33). The CEA service that MIEAC describes in its Petition is listed in its interstate “Switched Access Tariff,” although its tariff does not define or reference “CEA service” as such. *See* Petition at 10. These services are listed under the tariff section titled, “Switched Transport Rates,” and consist of “Originating Switched Transport (composite) – Non-8YY,” “Originating Switched Transport (composite) – 8YY,” “Terminating Transport,” and “Terminating Tandem Switching.” MIEAC Transmittal No. 33. The “composite” reference with regard to “originating switched transport” service denotes that the rate includes tandem transport and switching elements. *See* MIEAC Tariff Description and Justification at 8.

⁸⁶ Petition at 4.

transport service in competition with MIEAC.”⁸⁷ MIEAC explains that IXCs may route terminating traffic through these tandems instead of using MIEAC’s CEA service.⁸⁸

24. MIEAC also explains that, although the original rationale for CEA service was to provide 1+ origination service for LECs that lacked presubscription capability in their own switches, today the software to provide presubscribed 1+ service is readily available to all subtending LECs.⁸⁹ Therefore, LECs that do not want to use the 1+ origination service provided by MIEAC could opt to subtend their switches to other access tandems and offer IXCs the ability to originate traffic through those tandems instead of using MIEAC’s CEA service.⁹⁰

C. Forbearance Under Section 10 of the Act

25. Section 10 of the Act, as amended by the Telecommunications Act of 1996,⁹¹ requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier or telecommunications service if the Commission determines that: (1) enforcement of the requirement “is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;” (2) enforcement of that requirement “is not necessary for the protection of consumers;” and (3) “forbearance from applying such provision or regulation is consistent with the public interest.”⁹² Forbearance is warranted only if all three elements are satisfied and required whenever all three elements are satisfied.⁹³

III. DECLARATORY RULING

26. We find on our own motion⁹⁴ that the Commission’s rules implementing sections 203 and 214(a) of the Act concerning dominant carrier treatment no longer apply to MIEAC with respect to its provision of CEA service. Generally, where carriers lack market power, they are not considered dominant under the Commission’s rules.⁹⁵ Based on the facts and arguments presented in MIEAC’s

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* (“In LATA 620, CenturyLink has access tandems in Rochester, Owatonna and Windom. In addition, Consolidated Communications has an access tandem in Mankato. In LATA 624, CenturyLink has an access tandem in Duluth. In LATA 626, CenturyLink has an access tandem in St. Cloud. In LATA 628, CenturyLink and Peerless have access tandems in Minneapolis. In LATA 636, CenturyLink has access tandems in Wadena and Grand Forks, ND.”).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ 47 U.S.C. § 160(a).

⁹² *Id.* In making the public interest determination, the Commission must also consider, pursuant to section 10(b) of the Act, “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” *Id.* § 160(b).

⁹³ *Id.* § 160(a) (stating that the Commission “shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that” the three elements set forth in that paragraph are met (emphasis added)); *see also Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three elements of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one element).

⁹⁴ *See* 47 CFR § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

⁹⁵ *See, e.g.*, 47 CFR § 61.3(q); *see also 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8290, para. 20 n.46.

unchallenged Petition, and in light of the regulatory reforms and marketplace changes that have occurred with respect to interstate switched access services since MIEAC was first deemed dominant, we declare that MIEAC lacks market power in its provision of CEA service. As a consequence, MIEAC is no longer subject to dominant carrier regulation in the provision of its CEA service, including the Commission's rules implementing sections 203 and 214(a) of the Act.⁹⁶

A. The Absence of Market Power

27. MIEAC's lack of market power is the foundational premise of our action today that relieves MIEAC of dominant carrier regulation of its CEA service.⁹⁷ To conduct a market-power analysis we must first determine the relevant geographic and product markets.⁹⁸ In this case, the relevant geographic market is limited to the five LATAs in Minnesota (and part of North Dakota) where MIEAC provides CEA service.⁹⁹ And the relevant product markets consist of interstate switched access service, or, more specifically, interstate originating and terminating switched access rate elements, including interstate tandem switching and transport for IXCs.¹⁰⁰

28. With the relevant markets defined, we turn to our analysis of MIEAC's ability to exercise market power, which "depends, in part, on the structure of the market in which [MIEAC] operates."¹⁰¹ Market structure is a product of marketplace competition.¹⁰² As MIEAC explains, "[e]ach of the five LATAs that MIEAC serves has at least one, and in several cases multiple, access tandems operated by LECs" that offer tandem switching and transport service in competition with MIEAC.¹⁰³ No comments

⁹⁶ The Commission has authority to issue a declaratory ruling "to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e); *see also* 47 CFR § 1.2. The Administrative Procedure Act and the Commission's rules give us wide latitude to resolve such uncertainties via declaratory rulings. *See* 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."); 47 CFR § 1.2; 47 CFR § 0.91(b), (m); 47 CFR § 0.291 (delegating to the Wireline Competition Bureau Chief "authority to perform all functions of the Bureau, described in § 0.91").

⁹⁷ *See* 47 CFR § 61.3(q) (defining "dominant carrier" as a "carrier found by the Commission to have market power (*i.e.*, power to control prices)"); *see also* 2016 Technology Transitions DR and Order, 31 FCC Rcd at 8287, para. 10 ("By contrast, non-dominant carriers lack the market power necessary to sustain prices either unreasonably above or below costs.") (internal quotation marks omitted).

⁹⁸ *See, e.g., Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3275-76, 3293-94, paras. 7, 38 (1995) (*AT&T Domestic Non-Dominance Order*).

⁹⁹ Petition at 4 (noting that MIEAC provides CEA service in LATAs 620, 624, 626, 628, and 636, and that in LATA 636 (which spans parts of Minnesota and North Dakota), CenturyLink has access tandems in both Minnesota and North Dakota).

¹⁰⁰ Petition at 3 (observing that MIEAC provides "tandem switching and transport services" to "over 80 [LECs] across five different [LATAs] and provides 1+ presubscription (CEA) services"). The Petition before us fails to distinguish the market for interstate tandem services from interstate switching services, and we decline to undertake such a granular analysis without more.

¹⁰¹ *See* 2016 Technology Transitions DR and Order, 31 FCC Rcd at 8291, para. 22 (citing (*CLEC Access Charge Reform Order*, 16 FCC Rcd at 9936, para. 32); *AT&T Domestic Non-Dominance Order*, 11 FCC Rcd at 3293, para. 38).

¹⁰² *See, e.g., 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8287, para. 11 (stating that to determine market power in a dominance analysis, "the Commission historically has examined clearly identifiable market features such as the number and size distribution of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services") (citations and internal quotation marks omitted).

¹⁰³ Petition at 4 (identifying competing access tandems in LATAs 620, 624, 626, 628, and 636). Though MIEAC adds that "IXC access customers have the option of building direct connection routes to any local exchange," we fail to find that argument persuasive, as it has always been the case that IXCs could build such connections. *See* Petition at 4.

were filed. Accordingly, there is no dispute of this assessment of the prevailing competitive conditions or contrary evidence regarding the state of competition. We find that the presence of these competitors significantly limits any potential market power that MIEAC could wield.¹⁰⁴

29. Our analysis is further informed by regulatory and technological changes that have occurred with respect to interstate switched exchange access service since MIEAC was first authorized to operate. Importantly, the *USF/ICC Transformation Order* adopted substantial reforms to the regulations governing switched access rates that reduced the switched access rate elements that access service providers are permitted to charge IXCs for under their tariffs.¹⁰⁵ Indeed, it was these reforms that led the Commission to later find in 2016 that “no carrier can exert market power in its provision of [interstate switched access] services, regardless of its dominance classification.”¹⁰⁶ Because MIEAC must benchmark its CEA interstate switched access rates to the incumbent LEC CenturyLink—whose rates transitioned to zero or were capped as a result of the intercarrier compensation reforms—MIEAC is similarly prevented from charging supra-competitive rates for its interstate switched access service. This limitation would hold MIEAC’s rates in check even if—contrary to the facts presented—it was not subject to effective competition.

30. MIEAC’s inability to raise its switched access rates to unjust and unreasonable levels is supported by the Commission’s decision in the *Aureon First Tariff Investigation Order*, which held that CEA providers are subject to the *lower* of the rate prescribed by the competitive LEC benchmarking rules adopted in the *USF/ICC Transformation Order*, or the cost-based rate, thus further constraining the rates MIEAC can charge for its switched access service, independent of the dominant carrier pricing and related rules.¹⁰⁷ MIEAC’s current tariffed rates are below the maximum allowed for fully-distributed cost-based rates,¹⁰⁸ which in turn are lower than the applicable benchmark rates.¹⁰⁹ This illustrates that competitive pressures have depressed MIEAC’s pricing beneath the level permitted by our pricing rules.

¹⁰⁴ Our assessment of market power also reflects our evaluation of the market as it would exist were MIEAC not classified as a dominant provider. *See generally 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8295, para. 33 (finding that regulatory developments had fundamentally altered the market and created conditions that no longer sustain marketplace dominance).

¹⁰⁵ *See generally USF/ICC Transformation Order*.

¹⁰⁶ *See 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8292, 8295, paras. 26, 33. The fact that CEA providers were not included in this finding was not because the Commission found they continued to have market power over switched access service, but rather because CEA providers do not provide service to end users, such providers were not part of the underlying petition for declaratory relief and there was no record concerning CEA service in that proceeding. *See 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8290, para. 19 n.43; *Aureon Liability Order*, 32 FCC Rcd at 9691, para. 27.

¹⁰⁷ *See supra* para. 20.

¹⁰⁸ Commission staff determined MIEAC’s fully-distributed cost-based rates on the following basis: At the 9.75% maximum authorized rate of return, based on data reflected in MIEAC’s tariff year 2022-2023 tariff filing, Commission staff determined that MIEAC’s terminating transport rate could be as high as \$0.001678 per MOU, taking MIEAC’s terminating tandem switching rate, \$0.0021 per MOU, other switched access rates, and miscellaneous revenues as a given and after adjusting state and federal income taxes to be commensurate with the maximum return. Adding this terminating transport rate to MIEAC’s terminating tandem switching rate produces a combined terminating tandem switching and transport rate of \$0.003778, a rate that falls below CenturyLink’s CLEC benchmark terminating rate of \$0.006167 per MOU. *See* MIEAC F.C.C. Tariff No. 2, Transmittal No. 33, 2022 Annual Access and TRP Filing, Tbls. “MIEAC 2022 TRP Rate of Return_TY 23_Model” and “2022 TRP Access Filing_Rate of Return_ILEC Data” (filed June 24, 2022). Significantly, however, as MIEAC explains, it “has chosen to retain its existing terminating rates” at even lower levels – at \$0.0029 per MOU – because of the “competitive nature of terminating traffic.” MIEAC Tariff Description and Justification at 7, 13-14; Petition at 11.

¹⁰⁹ *See* Petition at 11 (citing MIEAC Tariff Description and Justification at 12).

We therefore agree with MIEAC that “regulatory reforms have restructured the marketplace such that MIEAC is unable to exert market power.”¹¹⁰

31. The Commission has previously recognized that, in addition to regulatory reforms, “[t]he competitive decline of switched telephone service could provide a compelling basis for finding that incumbent LECs lack market power over interstate switched access”¹¹¹ Indeed, the broad market trends showing the shift away from switched access telephone services, such as MIEAC’s CEA service, are well-documented: “[R]esidential and business customers now choose [telephone] service from wireless, Voice over Internet Protocol (VoIP), cable, and other providers offering bundled, multi-functional, broadband offerings that render voice service just one application among many.”¹¹² Further, as MIEAC points out, “today the software to provide presubscribed 1+ service is readily available to all subtending LECs” providing competitive alternatives to MIEAC’s CEA service that did not exist when it was initially authorized.¹¹³ MIEAC also reports that the number of terminating minutes of use (MOU) on its network has “dramatically declined” since 2012, while originating MOU have “steadily declined” for even longer, since 2008.¹¹⁴ Indeed, MIEAC’s most recent figures illustrate these trends: for example, from 2020 to 2021, total interstate switched minutes on MIEAC’s network decreased by 28 percent.¹¹⁵

B. Section 203 Tariffing Obligations

32. Our finding that MIEAC is no longer a dominant carrier in the provision of CEA service relieves MIEAC from complying with certain pricing and tariff-related rules that are no longer necessary to ensure just and reasonable rates.¹¹⁶ These rules include requirements to file tariffs, provide cost data and other information to support any tariff filings MIEAC chooses to make, notice periods for any tariff filings, and reports of proposed changes in depreciation rates.¹¹⁷ By reclassifying MIEAC as non-dominant with regard to CEA service, we relieve it of all tariffing obligations that would otherwise apply if classified as a dominant carrier. Going forward, MIEAC will be regulated as a non-dominant competitive LEC with respect to its CEA service, including being subject only to the rate caps applicable to non-dominant competitive LECs under the CLEC Benchmark Rule to ensure that any federally-tariffed rates are just and reasonable.¹¹⁸ Further, notwithstanding its non-dominant status, the Act provides the Commission with ample authority to require MIEAC to produce any accounting or cost data that the

¹¹⁰ Petition at 2, 4, 9-10 (discussing MIEAC’s lack of market power and presence of competition).

¹¹¹ *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8293, para. 29.

¹¹² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, WC Docket No. 14-192, et al., Memorandum Opinion and Order, 31 FCC Rcd 6157, 6161, para. 5 (2015) (*USTelecom 2015 Forbearance Order*) (citation and internal quotation marks omitted). Indeed, customers for wireline voice services “have increasingly popular choices that did not exist when the equal access requirements were established, such as interconnected VoIP from facilities-based and over-the-top providers.” *Id.* at 6185, para. 49 (citations omitted).

¹¹³ Petition at 4.

¹¹⁴ *Id.* at 13. No party disputes that demand for MIEAC’s CEA service has declined.

¹¹⁵ *Id.* at 13, 17 (Appx. B). MIEAC anticipates this trend of declining revenue will continue for year 2022-23 “due to steadily decreasing demand for originating and terminating traffic based on 2021 trends and the declining access lines of subtending LEC carriers.” *Id.* at 13.

¹¹⁶ See 47 CFR pt. 61, subpt. E.

¹¹⁷ 47 CFR §§ 61.38, 61.39, 61.58, 43.43.

¹¹⁸ 47 CFR § 61.26.

Commission deems necessary in the future for regulatory purposes, including rulemakings, investigations, or adjudications to ensure just and reasonable rates, terms, and conditions.¹¹⁹

C. Section 214 Oversight

33. Our declaration that MIEAC is no longer dominant in its provision of its CEA service also results in streamlined non-dominant carrier section 214 transfer of control and discontinuance review procedures that apply to this service.¹²⁰

34. *Transfers of Control.* Because we find that MIEAC is no longer dominant in its provision of its CEA service, section 63.03 does not apply to that service to the extent it limits dominant carrier eligibility for presumptive streamlined treatment.¹²¹ This relief preserves sufficient Commission oversight of any transfers of control involving MIEAC, but expands the range of circumstances in which applications seeking Commission authorization for transfers of control involving MIEAC would be eligible for streamlined treatment. The Commission will still review any such applications, and it retains broad discretion to remove those applications from streamlined processing where circumstances and the public interest warrant.¹²² We therefore preserve sufficient Commission oversight of any transfers of control involving MIEAC, and find more conservative treatment unnecessary.

35. *Service Discontinuances.* Because MIEAC is now considered non-dominant with respect to its CEA services, any applications it files seeking Commission authorization to discontinue those services will be eligible for the shorter 31-day timeline for streamlined approval for discontinuance applications from non-dominant carriers.¹²³ Preserving the 60-day timeline for review of MIEAC's applications to discontinue CEA services is not necessary to protect consumers. As with transfers of control, the Commission's discontinuance rules grant the Commission discretion to remove an application from streamlined processing when the public interest demands a more searching review.¹²⁴

IV. MEMORANDUM OPINION AND ORDER

36. In this Memorandum Opinion and Order, as an alternative basis for providing the relief requested by MIEAC set forth in our declaration of non-dominance above, we conditionally grant MIEAC's Petition to forbear from the Commission's dominant carrier rules stemming from sections 203 and 214(a) of the Act, subject to MIEAC's compliance with the non-dominant carrier rules associated with those same sections of the Act. In doing so, we follow precedent whereby the Commission has granted forbearance from particular provisions of the Act or regulations because other applicable regulatory requirements (including requirements imposed as a condition of the grant of forbearance) provided the necessary safeguards to ensure sufficient competition and protect consumer welfare.¹²⁵

¹¹⁹ See, e.g., 47 U.S.C. §§ 154(i), 208, 201, 202, 220, 254(k), 403.

¹²⁰ See 47 CFR §§ 63.03, 63.71; see generally *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8300-02, paras. 49-54.

¹²¹ 47 CFR § 63.03(b).

¹²² 47 CFR § 63.03(c); see *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8301, paras. 54.

¹²³ 47 CFR § 63.71(a)(5)(i), (f)(1).

¹²⁴ 47 CFR § 63.71(a)(5), (f)(1); see *2016 Technology Transitions Order*, 31 FCC Rcd at 8300, para. 51.

¹²⁵ See, e.g., *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 et al., Memorandum Opinion and Order, 34 FCC Rcd 2590, 2598-2602, paras. 16-24 (2019) (granting forbearance from the section 64.1903 separate affiliate obligations for independent rate-of-return LECs given "multiple statutory and regulatory safeguards to prevent the potential cost misallocation that th[is] . . . requirement . . . is intended to prevent"); *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket No. 12-61 et al., Memorandum Opinion and Order and Report and Order and Further Notice of

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Similar to those cases, forbearance from dominant carrier regulation conditioned upon compliance with non-dominant carrier rules does not create a regulatory vacuum; instead, as MIEAC itself observes, it will “be subject to regulation as a non-dominant carrier, including being subject to the rate caps” applicable to competitive LECs under the benchmarking requirement and the *8YY Access Charge Reform Order*,¹²⁶ and notice and opportunity for public comment under the transfer of control and discontinuance rules.¹²⁷ We find forbearance from the dominant carrier provisions of sections 203¹²⁸ and 214¹²⁹ of the Act and associated dominant carrier regulations is not only appropriate but is required by section 10 of the Act,¹³⁰ particularly given that our non-dominant carrier rules will provide adequate safeguards to protect competition, and by extension, consumers.¹³¹

A. Forbearance from Section 203 and Related Dominant Carrier Regulatory Requirements

37. We find that forbearance from the pricing and tariff-related dominant carrier regulation of MIEAC’s CEA service is warranted. The undisputed facts alleged in the Petition demonstrate that IXCs and MIEAC’s subtending LECs now have access to a variety of routing options in MIEAC’s service area in Minnesota.¹³² Non-dominant carrier regulation will adequately safeguard consumers from unjust or

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Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7675-76, paras. 107-08 (2013) (*2013 USTelecom Long Form Forbearance Order*) (granting forbearance from certain cost assignment rules where conditions imposed on the forbearance and other still-applicable rules and requirements were adequate to meet the Commission’s needs); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19435-36, para. 43 (2005) (granting forbearance from discontinuance and transfer of control requirements applicable to dominant carriers “so long as Qwest is subject to the same treatment as non-dominant carriers” and stating that “we predicate this relief upon Qwest’s compliance with the discontinuance rules that apply to non-dominant carriers”); *Petition for Forbearance of Iowa Telecommunications Services, Inc. d/b/a/ Iowa Telecom Pursuant to 47 U.S.C. § 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study*, CC Docket No. 01-331, Order, 17 FCC Rcd 24319, 24325-26, paras. 18-19 (2002) (granting forbearance from an interstate switched access rate regulation to allow rates to be reset at a forward-looking cost level in light of protections of the forward-looking cost approach and other, still-applicable legal requirements); *Petition for Forbearance from Application of the Communications Act of 1934, as Amended, to Previously Authorized Services*, Memorandum Opinion and Order, 12 FCC Rcd 8408, 8411-12, paras. 9-10 (Com. Car. Bur. 1997) (granting forbearance from section 203(c) of the Act for purposes of providing a refund in light of other, still-applicable legal requirements).

¹²⁶ Petition at 9; 47 CFR §§ 51.911(c), 61.26; *8YY Access Charge Reform Order*.

¹²⁷ See 47 CFR §§ 63.03, 63.71(a).

¹²⁸ We refer to the section 203 and the related regulations as “the pricing and tariff-related rules” throughout this section. Specifically, we forbear from applying part 61, subpart E, of the Commission’s general rules concerning dominant carriers, notice requirements for tariff publications for dominant carriers, 47 CFR § 61.58, and reporting requirements of proposed changes in depreciation rates by dominant carriers, 47 CFR § 43.43, as these rules apply to MIEAC’s CEA service.

¹²⁹ Specifically, we forbear from the Part 63 rules and regulations that govern the procedures for dominant carriers concerning transfers of control and discontinuance. See 47 CFR §§ 63.03, 63.71.

¹³⁰ 47 U.S.C. § 160(a) (mandating that “the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets” if the three listed conditions are met (emphasis added)).

¹³¹ See 47 CFR pt. 61, subpt. C (“General Rules for Nondominant Carriers”); *id.* §§ 63.03, 63.71.

¹³² See Petition at 4. Nor are we required to conduct any more specific test of marketplace competition in light of these findings. See, e.g., *Earthlink, Inc. v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006); *USTelecom 2015 Forbearance*

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unreasonable rates, rendering dominant carrier regulation of MIEAC's CEA service unnecessary. Accordingly, MIEAC's Petition satisfies the section 10 criteria with respect to dominant carrier pricing and tariff-related rules.

38. *Section 10(a)(1)(Just and Reasonable Rates)*. We find that enforcement of our dominant carrier pricing and tariff-related regulation of MIEAC's CEA service offerings is unnecessary to ensure just and reasonable pricing of MIEAC's switched access rates.¹³³ To decide whether a regulation is necessary, the Commission considers "whether a current need exists for a rule," including whether there remains "a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."¹³⁴ As discussed above, the Commission's regulatory reforms in recent years have constrained interstate switched access rates and bolstered marketplace competition, which helps safeguard just and reasonable rates. Additionally, the *USF/ICC Transformation Order*, which "undermine[d] the distinction between dominant and non-dominant providers of interstate switched access services" through its access charge reforms obviates the need to subject MIEAC to dominant carrier tariffing and pricing rules any longer.¹³⁵ MIEAC also explains that "reduced market demand" has left it "unable to raise prices above competitive levels,"¹³⁶ and there is no record evidence contradicting that claim. Indeed, MIEAC has not raised any of its interstate switched access rates since December 2011.¹³⁷ Furthermore, its interstate rate of return has been below the Commission's ceiling at "all times since 2012."¹³⁸

39. IXCs will also be safeguarded from unjust or unreasonable access rates by the procedural requirements set forth in sections 51.911 and 61.26 of our rules that will apply, or continue to apply, to MIEAC's non-dominant interstate switched access tariffs going forward.¹³⁹ These requirements permit non-dominant carriers to file tariffs on one day's notice,¹⁴⁰ but both dominant and non-dominant carriers

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Order, 31 FCC Rcd at 6163-65, paras. 9-10 (finding that "persuasive evidence of competition" was "not inherently necessary" to grant forbearance in light of general findings with respect to "broad market trends and shifting demand" and related "claims about competition"); see also *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8294, para. 32 (declining a traditional analysis of market share, demand and supply elasticity, and related analytical tools).

¹³³ Section 10(a) requires that we find that enforcement of the applicable regulations is not necessary to ensure that rates are just and reasonable and are not unjustly or unreasonably discriminatory. To the extent our findings here protect against rates, charges, practices, and classifications that are not just and reasonable, it logically follows that it also protects against charges, practices, and classifications that are unjust and unreasonable. Thus, to whatever extent the enforcement of dominant carrier regulation on the provision of CEA service is not necessary to ensure just and reasonable rates, it necessarily follows that it is not necessary to prevent the opposite from occurring, that is, unjust and unreasonable rates. Further, no party has advanced a theory under which MIEAC could engage in unreasonable practices and classifications regarding its CEA service without also being able to charge unjust and unreasonable rates.

¹³⁴ *USTelecom 2015 Forbearance Order*, 31 FCC Rcd at 6162-63, para. 8 (quoting *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d at 512).

¹³⁵ *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8288, para. 14.

¹³⁶ Petition at 2.

¹³⁷ Petition at 10.

¹³⁸ *Id.* at 10, Appx. B. MIEAC further notes that its interstate rate of return is projected to drop to 3.15% in 2022-23, "based on 2021 trends and the declining access lines of subtending LEC carriers." Petition at 10, Appx. B. MIEAC's rate of return for 2021 was 6.34%. Petition at 10, Appx. B.

¹³⁹ 47 CFR §§ 51.911(c), 61.26.

¹⁴⁰ 47 CFR § 61.58(f).

must file rate reductions or increases on seven or fifteen days' notice, respectively, for their rates to be "deemed lawful."¹⁴¹ Any tariff filed on shorter notice is not presumed to be just and reasonable and may be subject to refund. In addition, section 61.26 of our rules prohibits non-dominant competitive LECs from filing any tariffs for interstate switched access services unless the tariffed rates for those services are no higher than the rates charged for similar services by the competing incumbent LEC. This provision adequately protects MIEAC's customers from unjust and unreasonable rates for its CEA service, given this forbearance from dominant carrier regulation is conditioned on compliance with non-dominant carrier rules, including, but not limited to, the CLEC Benchmark Rule.¹⁴² Finally, notwithstanding the safeguards of the non-dominant carrier regulations, if an IXC believes that MIEAC is charging unjust and unreasonable tariffed rates going forward, that IXC may file a complaint with the Commission pursuant to sections 201 and 208 of the Act. Collectively, these safeguards confirm that dominant carrier regulation of MIEAC's CEA service is no longer needed to ensure just and reasonable rates.

40. *Section 10(a)(2) (Consumer Protection)*. Similarly, we find that dominant carrier pricing and tariff-related regulation of MIEAC's CEA service is unnecessary for consumer protection. Our reasoning relies heavily on our findings above concerning the continued availability of competitive alternatives to MIEAC's CEA services and the reasonableness of MIEAC's current rates, which fall below the benchmark rates and result in a rate of return lower than the maximum allowable rate of return for dominant carriers. Although regulatory reforms and technological and marketplace changes provide important safeguards on their own, we find the competitive LEC benchmarking requirement to be, perhaps, the most effective consumer protection safeguard. MIEAC must keep its switched access rates at or below the competitive LEC benchmark and such rates are presumptively reasonable.¹⁴³

41. CenturyLink is the competing incumbent LEC for purposes of MIEAC's benchmark obligation,¹⁴⁴ and MIEAC's "rates for composite switched transport on 1+ originating traffic and all terminating transport are capped at those of the incumbent [CenturyLink] under the benchmark rule."¹⁴⁵ Importantly, MIEAC projects a 3.15% rate of return for 2023, substantially lower than the Commission's authorized rate of return of 9.75%, as well as below the level which the current competitive LEC benchmark would permit.¹⁴⁶ As a result, the Commission's allowable rate of return has no operative effect on MIEAC's rates. In fact, the Petition demonstrates that the competitive pressures discussed herein have helped reduce pricing below the maximum levels permitted by either our dominant-carrier or non-dominant-carrier regulations, and thus below the threshold needed to protect consumers.¹⁴⁷ Indeed,

¹⁴¹ 47 U.S.C. § 204(a)(3); 47 CFR § 61.58(a)(2)(i) ("Local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed . . . shall be filed on 15 days' notice.")

¹⁴² 47 CFR § 61.26(c).

¹⁴³ See *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9948, para. 60 (discussing "the conclusive presumption of reasonableness that we will accord to tariffed [competitive LEC] rates at or below the benchmark" of the relevant incumbent LEC).

¹⁴⁴ See MIEAC Tariff Description and Justification at 10 (explaining that "since CenturyLink is the ILEC operating tandem switches in the rate centers where MIEAC's Toll Transfer Points are located," MIEAC anticipates that CenturyLink would be the competing ILEC for benchmark purposes).

¹⁴⁵ Petition at 11.

¹⁴⁶ See Petition at 10.

¹⁴⁷ When CenturyLink's tariffed interstate tandem switched access rates are applied to the actual mileage of MIEAC's network, MIEAC's resulting benchmark rate for terminating traffic would be \$0.006167 per terminating MOU, however MIEAC's combined tariffed rate for terminating tandem switching and transport is only \$0.0029. Petition at 11; MIEAC Tariff Description and Justification at 12, 14 (rate elements for terminating transport and terminating tandem switching); see also MIEAC Tariff Description and Justification at 11-12 ("MIEAC's rate

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the competitive LEC benchmarking requirement “prevent[s] MIEAC from charging IXCs excessive rates for CEA” service or from inappropriate cost shifting, rendering dominant carrier rate regulation unnecessary.¹⁴⁸

42. Additionally, after we forbear from applying our “General [Tariff] Rules for Dominant Carriers” to MIEAC, our “General Rules for Nondominant Carriers” will apply to MIEAC as a condition of this forbearance.¹⁴⁹ These include procedural regulations applicable to non-dominant carrier tariffed services, which provide further consumer protections. As a non-dominant competitive LEC, MIEAC would be entitled to fifteen (15) days from the effective date of an incumbent tariff filing to adjust its benchmarked tariffed rates, if any such adjustments are needed.¹⁵⁰ Further, the Commission retains the authority to require MIEAC to file cost support and other data with respect to its interstate switched access tariffs, as the Commission deems necessary for regulatory purposes, including to ensure just and reasonable rates, terms, and conditions.¹⁵¹

43. *Section 10(a)(3)(Public Interest)*. Finally, we find that forbearance from dominant carrier pricing and tariff-related rules and regulations as applied to MIEAC’s CEA service will serve the public interest.¹⁵² We agree with MIEAC that there is no remaining benefit to maintaining dominant carrier requirements where we have found that dominant carrier regulation is no longer needed to ensure just and reasonable rates or to otherwise protect consumers.¹⁵³ We find that here, in the wake of regulatory reform and technological change, the application of our dominant carrier tariffing rules and requirements to MIEAC’s CEA service “no longer bears any connection” to the basis for their original adoption.¹⁵⁴ MIEAC asserts that the costs of dominant carrier regulatory compliance are “significant and burdensome,” and there is no record evidence to the contrary.¹⁵⁵ The Commission has based prior public interest findings on the benefits of reduced costs to carriers from eliminating unnecessary regulation.¹⁵⁶ We agree with MIEAC that there are “benefits to be realized from increased efficiency,”¹⁵⁷ and that

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elements and rate structure do not mirror CenturyLink’s tariff, so MIEAC conducted a comparison of its total interstate originating 1+ and terminating access minutes for 2021 using the CenturyLink rates versus revenues using the existing MIEAC rates.”).

¹⁴⁸ See Petition at 11. By the same reasoning, our other pricing-related dominant carrier rules and regulations are equally unnecessary with regard to MIEAC’s CEA service. Specifically, the requirement for MIEAC to report changes in depreciation rates, *see* 47 CFR § 43.43, is no more necessary than the “requirement to perform biennial cost studies and rate-of-return calculations.” Petition at 11. These regulations have no relevance or applicability if a carrier is no longer subject to cost-based rate regulations.

¹⁴⁹ See 47 CFR § pt. 61, subpt. C (“General Rules for Nondominant Carriers”) (including, for example, § 61.19 (“Detariffing of international and interstate, domestic interexchange services”) and § 61.26 (“Tariffing of competitive interstate switched exchange access services”)).

¹⁵⁰ See 47 CFR § 61.26(c).

¹⁵¹ See, e.g., 47 U.S.C. §§ 154(i), 208, 201, 202, 220, 254(k), 403.

¹⁵² See 47 U.S.C. § 160(a)(3).

¹⁵³ See Petition at 2.

¹⁵⁴ *Id.* at 9, 14.

¹⁵⁵ Petition at 14 (“MIEAC’s costs to comply with the Commission’s dominant carrier pricing and tariff filing rules are significant and burdensome”).

¹⁵⁶ See, e.g., *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules et al.*, WC Docket No. 07-21 et al., Memorandum Opinion and Order, 23 FCC Rcd 7302, 7324, para. 40 (2008) (finding that granting forbearance of the Cost Assignment Rules “will likely result in substantial cost savings and enable AT&T to compete more effectively”).

¹⁵⁷ See Petition at 12.

“eliminating rules that increase a carrier’s operating costs, in the absence of any benefit to maintaining such requirements, is in the public interest.”¹⁵⁸

44. In making our public interest determination, we must also “consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions”¹⁵⁹ No carrier or other interested stakeholder has argued that competitive harm would occur in the absence of dominant carrier pricing and tariff-related regulation of MIEAC’s CEA service. We therefore find it in the public interest to forbear from unnecessary dominant carrier pricing and tariff-related rules and to reduce overall costs by reducing MIEAC’s regulatory obligations.¹⁶⁰

B. Forbearance from Section 214(a) Dominant Carrier Regulations

45. We find that forbearance relief is also warranted from the dominant carrier provisions associated with section 214(a) with respect to MIEAC’s CEA service. As discussed above, MIEAC is subject to effective competition in its provision of interstate switched access service. Like the pricing and tariff-related rules that we address above, this finding of effective competition justifies forbearance from dominant carrier section 214(a)-related requirements too—specifically, section 63.03 to the extent it limits dominant carrier eligibility for presumptive streamlined treatment for transfers of control applications and section 63.71(a) to the extent it provides almost double the timeframe within which domestic dominant carriers subject to streamlined treatment must wait to discontinue an interstate service after filing a discontinuance application.¹⁶¹ Our regulations governing transfers of control and service discontinuances for non-dominant carriers will apply to MIEAC as a condition of this forbearance, however, serving as regulatory backstops that will help ensure that the public interest is safeguarded and fulfilling the Commission’s statutory obligations under section 214(a). Forbearance here also is consistent with the Commission’s rationale for the dominant and non-dominant distinction in the first instance—i.e., “non-dominant carriers are unable to sustain the kind of business practices Congress was concerned about in adopting Section 214(a).”¹⁶² Further, even when MIEAC is regulated as a non-dominant carrier, the Commission will retain “broad flexibility to administer the Section 214(a) process in a manner that serves the public interest,” and, should circumstances require, it can always remove any MIEAC section 214(a) transfer of control or discontinuance applications from streamlined treatment if it finds that they merit a longer or more detailed review.¹⁶³ As explained below, MIEAC’s Petition satisfies the section 10 criteria with respect to dominant carrier section 214(a) transfer of control and discontinuance application rules.

¹⁵⁸ *Id.* at 14.

¹⁵⁹ 47 U.S.C. § 160(b) (“In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”).

¹⁶⁰ *See, e.g., USTelecom 2015 Forbearance Order*, 31 FCC Rcd at 6178, para. 36 (finding that forbearance is in the public interest partly because it would reduce costs); *see also* Petition at 14 (asserting same). We need not find that cost savings would be reinvested to find they benefit the public. *See USTelecom 2015 Forbearance Order*, 31 FCC Rcd at 6178, para. 36; *2013 USTelecom Long Form Forbearance Order*, 28 FCC Rcd at 7650-51, para. 41 (finding that the cost reduction from elimination of unnecessary rules is in the public interest because it, in turn, generally benefits consumers through lower rates and greater competition).

¹⁶¹ 47 CFR §§ 63.03, 63.71; *see generally 2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8300-02, paras. 49-54.

¹⁶² *1980 Section 214 Streamlining Order*, 85 F.C.C.2d at 39, para. 114 (dominant carrier treatment was “to serve primarily as a protection against excessive expenditures on plant by rate-base regulated common carriers and against service discontinuance by carriers in areas where customers had no reasonable alternative service available”).

¹⁶³ *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8300, para. 51.

1. Transfers of Control

46. *Section 10(a)(1) (Just and Reasonable Rates)*. We conclude that enforcement of the dominant carrier requirements applicable to transfer of control applications is not necessary to ensure just and reasonable rates for MIEAC's CEA service. As discussed above with respect to section 203 and its related regulations, MIEAC faces reduced demand for its CEA service, and its interstate rate of return has consistently remained below the Commission's ceiling since 2012.¹⁶⁴ Further, the benchmarking requirement will adequately protect MIEAC's customers and ultimately consumers from unjust and unreasonable rates in the absence of dominant carrier status.¹⁶⁵ To the extent MIEAC enters into any section 214(a) transaction in the future for which it must seek Commission authorization, the Commission's non-dominant carrier processing rules for such an application continue to enable the Commission to scrutinize the effect of such transaction on consumer rates and competition absent dominant carrier treatment.¹⁶⁶

47. *Section 10(a)(2)(Consumer Protection)*. We find that the evolving marketplace and the statutory and regulatory safeguards that work to ensure just and reasonable rates for MIEAC's switched access service also ensure that consumers will not be harmed by forbearance from enforcement of the dominant carrier treatment applicable to MIEAC's transfer of control applications. While the relief we grant today expands the range of circumstances in which such applications seeking Commission authorization for transfers of control involving MIEAC would be eligible for streamlined treatment, it does not eliminate Commission oversight of such applications nor the opportunity for interested stakeholders, including IXCs or consumers, to have notice and an opportunity for comment. Importantly, the Commission retains broad discretion when conducting merger and other transaction reviews to remove those applications from streamlined processing where circumstances and the public interest warrant.¹⁶⁷ We therefore preserve sufficient Commission oversight of any transfers of control involving MIEAC and any potential impact on consumer welfare.

48. *Section 10(a)(3)(Public Interest)*. Finally, we find that forbearing from the dominant carrier requirements applicable to transfer of control applications involving MIEAC's CEA service is in the public interest. Alleviating MIEAC of an unnecessary regulatory requirement serves the public interest by making the transfer of control process more efficient and predictable for a competitive service provider, thus allowing MIEAC to move more quickly toward operational efficiencies.¹⁶⁸ Further, the public interest remains safeguarded by the section 214(a) transfer of control application criteria, which enables the Commission to obtain any information it deems necessary to satisfy its public interest obligations in acting on such transactions, especially with regard to promoting competitive market

¹⁶⁴ See Petition at 10, Appx. B.

¹⁶⁵ See 47 CFR §§ 51.911(c), 61.26; *USF/ICC Transformation Order*, 26 FCC Rcd at 17937, para. 807 (providing that competitive LECs may not tariff interstate switched access rates above the tariffed rate for such services offered by the incumbent LEC serving the area).

¹⁶⁶ 47 CFR § 63.03(c); see also *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8301, paras. 54.

¹⁶⁷ 47 CFR § 63.03(c); see also *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8301, paras. 54.

¹⁶⁸ Cf. *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10450, para. 134 (2018) (noting that eliminating outdated and unnecessary regulation serves the public interest by generally reducing "carriers' costs and, in turn, benefit[ing] consumers through lower rates and/or more vibrant competitive offerings"); *2013 USTelecom Long Form Forbearance Order*, 28 FCC Rcd at 7651, para. 41 (stating that "eliminating unnecessary regulation will generally reduce providers' costs and, in turn, benefit consumers through lower rates and/or more vibrant competitive offerings and promotes competition by providing a more level playing field because other providers of similar services are not subject to the rules").

conditions.¹⁶⁹

2. Service Discontinuances

49. *Section 10(a)(1)(Just and Reasonable Rates)*. For the same reasons stated above with respect to applications for transfers of control, we conclude that enforcement of the dominant carrier requirements applicable to discontinuance applications is not necessary to ensure just and reasonable rates for MIEAC's CEA service. Customer demand for MIEAC's CEA service continues to decline, and MIEAC has demonstrated that alternative service options are available to its CEA service in the LATAs where it seeks forbearance.¹⁷⁰ Additionally, to the extent our non-dominant discontinuance rules apply to any MIEAC switched access service discontinuance, interested or potential stakeholders having any concerns about the rates for alternative available services will have notice and the opportunity to comment on such discontinuance application.¹⁷¹

50. *Section 10(a)(2)(Consumer Protection)*. We find that the evolving marketplace for switched access services and the statutory and regulatory safeguards that work to ensure just and reasonable rates also ensure that consumers will not be harmed by forbearance from enforcement of the dominant carrier requirements applicable to section 214 discontinuance applications. The only impact of forbearing from the dominant carrier requirements of the section 214 discontinuance application process with respect to MIEAC's CEA service offerings is that any applications MIEAC files seeking Commission authorization to discontinue that service will be eligible for the shorter 31-day timeline for streamlined approval for discontinuance applications from non-dominant carriers.¹⁷² Preserving the 60-day timeline for review of MIEAC's applications to discontinue CEA service is not necessary to protect consumers given the availability of alternative service offerings MIEAC recounts in its Petition.¹⁷³ And as with transfers of control, the Commission's discontinuance rules grant the Commission discretion to remove an application from streamlined processing when unresolved objections are received and the public interest demands a more searching review¹⁷⁴ such as instances where no adequate replacement service is available or the affordability of the available replacement services is called into question.¹⁷⁵

51. *Section 10(a)(3)(Public Interest)*. Finally, we find that forbearing from the dominant carrier requirements applicable to discontinuance applications is in the public interest. We agree with MIEAC that there is no "benefit to maintaining outdated and burdensome dominant carrier requirements that no longer bear any connection to the original basis for their adoption."¹⁷⁶ Providing for quicker approval of any required application from MIEAC to discontinue its CEA service would help reduce costs associated with continuing to offer and provide this service for which there is increasingly declining demand, leaving MIEAC free to use those resources sooner for newer, more popular services. Further, the public interest remains safeguarded by the general section 214(a) discontinuance application

¹⁶⁹ See 47 CFR § 63.03; *Verizon-TracFone Order*, 36 FCC Rcd at 16999, para. 21.

¹⁷⁰ Petition at 2, 13.

¹⁷¹ 47 CFR § 63.71(a)(5)(i).

¹⁷² 47 CFR § 63.71(a)(5)(i), (f)(1).

¹⁷³ See Petition at 3.

¹⁷⁴ See 47 CFR § 63.71(a)(5), (f)(1); see also *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8300, para. 51.

¹⁷⁵ As noted above, these constitute two of the criteria considered by the Commission in evaluating discontinuance applications. See, e.g., *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8304, para. 62 & n.167; *Western Union Division, Commercial Telegrapher's Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 388 U.S. 864 (1949).

¹⁷⁶ See Petition at 2.

criteria,¹⁷⁷ and the continued ability of the Commission to remove any discontinuance application from streamlined automatic grant should the public interest require a more scrutinizing review.¹⁷⁸

V. ORDERING CLAUSES

52. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1-4, 10, 201, 202, 203, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 203, and 214, and section 1.2 of the Commission's rules, 47 CFR § 1.2, this Declaratory Ruling and Memorandum Opinion and Order IS ADOPTED.

53. IT IS FURTHER ORDERED that, pursuant to sections 1-4 and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, as an alternative basis for granting relief, the Petition for Forbearance filed by the Minnesota Independent Equal Access Corporation IS GRANTED, subject to MIEAC's compliance with the Commission's non-dominant carrier rules implementing sections 203 and 214(a) of the Act, 47 U.S.C. §§ 203, 214(a), as set forth herein.

54. IT IS FURTHER ORDERED that pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), this Declaratory Ruling and Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 CFR §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Declaratory Ruling and Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷⁷ See 47 CFR § 63.71; *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8304, para. 62 & n.167.

¹⁷⁸ See 47 CFR § 63.71(a)(5), (f)(1); see also *2016 Technology Transitions DR and Order*, 31 FCC Rcd at 8300, para. 51.